

Exhibit No. # ~~1~~Date 1-9-09Bill No. SB 51

1085 HELENA AVENUE

POST OFFICE BOX 4416

HELENA, MONTANA 59604

## McCUE LAW FIRM, P.C.

STEPHEN R. McCUE

sr\_mccue@yahoo.com

MARY KELLY McCUE

mary.mccue@gmail.com

Exhibit No. # ~~1~~Date 1-9-09Bill No. SB ~~51~~ 26

406/442-2220

FAX 406/449-6038

January 9, 2009

TO: Members, Senate Public Health, Welfare, and Safety Committee  
FR: Mary K. McCue, Esq., representing Montana Medical Association

We support SB 26, with the amendments negotiated between the Montana Medical Association and Montana Hospital Association.

This bill ensures that the economic credentialing protection created in 2007 for physicians will not expire. The law provides an important protection for independently practicing physicians and therefore we support the continuation of this law. The current bill expands protection for physicians by expanding the economic credentialing limitation to outpatient centers for surgical services. This is equitable and supported by the MMA.

The interim committee that reviewed the economic credentialing statute, MCA 50-5-117, did a good job of balancing the concerns of hospitals who employ physicians and those of independently practicing physicians. However, we are proposing several amendments to more effectively achieve this balance.

First, there is a proposed amendment that deletes subsection (2)(a) on page 2. This issue addressed by this amendment centers on control of the medical policies of a hospital. The language presently in the statute would preclude some of our members, who are practicing independently, from serving in a leadership position in a hospital: as a board member, chief of staff, or presiding officer on a medical staff committee. Independent physicians are concerned that this language may give hospital-employed physicians control over medical staff policies that involve clinical issues. We believe the prohibition is overly broad. We think the better approach is expressed in the language of lines 12 through 16 on page 2 of the bill which requires the physician to recuse him or herself if the discussion involves the hospital's financial interests and the physician has a conflicting financial interest that may compromise the hospital board's fiduciary responsibility. This amendment strikes a middle ground between the interests of the hospital and independent physicians. It allows independent physicians to serve in leadership roles in a hospital, but also ensures that the hospital can require recusal from financial decisions of a doctor with competing financial interest, when important financial issues are discussed and decisions are made.

Another amendment removes the standard for "financial interest". The "five percent ownership" threshold seems arbitrary. MMA believes it is not necessary to set a standard or define

SB 26

January 9, 2009

Page 2

“financial interest” for the purposes of this law. The definition of “conflict of interest” provides adequate protection to the hospital because it allows it to require that a physician on a governing board not participate in any decision if the physician has a competing financial interest that affects the board’s fiduciary duty.

We urge the Committee to adopt the amendments proposed jointly by the Montana Medical Association and Montana Hospital Association and give a “do pass” recommendation to this legislation.

Thank you.